

**IN THE UNITED STATES DISTRICT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**DAN McCALEB, Executive Editor of
THE CENTER SQUARE,**

Plaintiff,

v.

**MICHELLE LONG, in her official capacity
as DIRECTOR of the TENNESSEE
ADMINISTRATIVE OFFICE OF THE
COURTS,**

Defendant.

Case No. 3:22-cv-00439

Judge Richardson

Magistrate Judge Frensley

**DEFENDANT’S RESPONSES TO PLAINTIFF’S STATEMENT OF MATERIAL FACTS
IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. Rule 56, Defendant, Michelle Long, hereby responds to Plaintiff’s Statement of Material Facts filed on December 15, 2023. (ECF No. 75.) This response is designed solely to respond to the Plaintiff’s Statement by identifying which of the factual grounds for Plaintiff’s motion are disputed. These disputes relate only to facts Plaintiff proffers, and have no bearing on Defendant’s Motion for Summary Judgment or the factual support for that Motion.

1. Defendant Michelle Long is the Director of the Administrative Office of the Courts (“AOC”). Deposition of Michelle Long (“Long Depo.”), ECF No. 74-2 at p. 8, Lines 20-24.

Response: Undisputed for purposes of ruling on the motion for summary judgment only.

2. Defendant Long oversees the AOC. <https://www.tncourts.gov/administration> (last visited Dec. 13, 2023).

Response: Undisputed for purposes of ruling on the motion for summary judgment only.

3. The AOC provides administrative support to the Advisory Commission. Long Depo., ECF No. 74-2 at p. 61, Lines 2-5.

Response: Undisputed for purposes of ruling on the motion for summary judgment only.

4. After the incident in 2018 with the verbally combative man at an Advisory Commission meeting, then General Counsel Rachel Harmon told Michelle Consiglio-Young that there was no need to put public notice out because meetings were going to be closed after that incident. Deposition of Michelle Consiglio-Young, ECF No. 74-3 at p. 45, Lines 4-15.

Response: Objection. Local Rule 56.01(b), requires the non-movant to set forth “[e]ach fact . . . in a separate, numbered paragraph” The statement above is compound, and therefore does not conform to the requirements of Local Rule 56.01.

Without waiving this Objection, disputed in part and undisputed in part. Defendant does not dispute, for purposes of ruling on the motion for summary judgment only, that Michelle Consiglio-Young testified that then General Counsel Rachel Harmon told Ms. Consiglio-Young that there was no need to put public notice out because meetings were going to be closed after a 2018 incident with a verbally combative man at an Advisory Commission meeting. (D.E. No. 74-3 at PageID# 2747, pp. 45-46, Lines 8-25, 1-15.) To the extent Plaintiff suggests that Advisory Committee meetings were open in 2018, disputed. Members of the Advisory Commission who were appointed in 2015 and 2016 understood that the Advisory Commission meetings were closed

to the public. (D.E. 72-2 at PageID## 2064, Lines 5-9, 2111, Lines 10-11; D.E. 72-3 at PageID## 2157, Lines 7-10, 2160, Lines 12-21, 2162, Lines 6-9, 2211, Lines 19-22.)

5. The AOC posted on its website a public meeting notice in advance of an Advisory Commission meeting that was going to be held on May 20, 2016. Public Meeting Notice, ECF No. 74-4.

Response: Disputed. Lang Wiseman testified that it was his belief that any past meeting notice published on the AOC website related to Advisory Commission meetings were notices “indicating when the date of a meeting would be,” and rejected the characterization that past meeting notices were necessarily “public meeting notices.” (D.E. 72-2 at PageID# 2109, Lines 16-23.) Defendant also testified that, after review, she did not see any public meeting notices for the Advisory Commission on the AOC website prior to a June 2023 notice. (D.E. 72-4 at PageID# 2304, Lines 17-25.) Rachel Harmon also testified that she was unaware of any public meeting notice related to a May 20, 2016, meeting of the Advisory Commission that was listed on the AOC website. (D.E. 72-6 at PageID## 2489-90, Lines 25, 1-6.)

6. The federal Standing Committee and each of the Advisory Committees typically meet twice per year. <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited Dec. 13, 2023).

Response: Undisputed for purposes of ruling on the motion for summary judgment only, subject to clarification. Defendant does not dispute that the uscourts.gov website referred to by Plaintiff makes the following statement, “[t]he [Federal] Standing Committee and each of the Advisory *Rules* Committees typically meet twice per year.” (emphasis added.) However,

Defendant objects to the introduction of any material fact which has not been properly supported under Fed. R. Civ. P. 56(c)(1). Here, Plaintiff has not proffered any document or material in the record authenticating the contents of the above website under Fed. R. Civ. P. 56(c)(1)(A), nor does Plaintiff's citation lay any foundation supporting the above website as having a material effect on the resolution of the issues presented in Plaintiff's Motion under Fed. R. Civ. P. 56(a).

7. Committee meetings are open to the public, except when a committee — in open session and with a majority present — determines that it is in the public interest to have all or part of the meeting closed and states the reason. <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited Dec. 13, 2023).

Response: Undisputed for purposes of ruling on the motion for summary judgment only, subject to clarification. In responding to this Statement, Defendant assumes that Plaintiff is referring to “committee meetings” of the federal government. Defendant does not dispute that the website referred to by Plaintiff makes the statement above. However, Defendant objects to the introduction of any material fact which has not been properly supported under Fed. R. Civ. P. 56(c)(1). Here, Plaintiff has not proffered any document or material in the record authenticating the contents of the above website under Fed. R. Civ. P. 56(c)(1)(A), nor does Plaintiff's citation lay any foundation supporting the above website as having a material effect on the resolution of the issues presented in Plaintiff's Motion under Fed. R. Civ. P. 56(a).

8. A video of the June 9, 2023, Advisory Commission meeting that was livestreamed to the public is on the TN Courts' YouTube channel.

<https://www.youtube.com/watch?v=TCCKGHybsxg>

Response: Undisputed for purposes of ruling on the motion for summary judgment only.

9. A video of the December 8, 2023, Advisory Commission meeting that was livestreamed to the public is on the TN Court's YouTube channel.

<https://www.youtube.com/watch?v=XHY3DFF3V2E>

Response: Undisputed for purposes of ruling on the motion for summary judgment only.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert W. Wilson, counsel for Defendant Michelle Long, hereby certify that a copy of this response is being served electronically via the Court's ECF/ECM service on January 5, 2024, upon the following:

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